

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHRISTOPHER WILLIAM
ASHLEY, ALLEN JOSEPH ASHLEY, and
JENNIFER WICKS ASHLEY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WILLIAM ASHLEY,

Respondent-Appellant,

and

KAREN ASHLEY,

Respondent.

In the Matter of CHRISTOPHER WILLIAM
ASHLEY, ALLEN JOSEPH ASHLEY, and
JENNIFER WICKS ASHLEY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KAREN ASHLEY,

Respondent-Appellant,

and

WILLIAM JOSEPH ASHLEY,

Respondent.

UNPUBLISHED

July 26, 2005

No. 257796

Macomb Circuit Court

Family Division

LC No. 98-047121-NA

No. 257838

Macomb Circuit Court

Family Division

LC No. 98-047121-NA

Before: Neff, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

Respondent father first argues that his constitutional rights as a parent were violated when the trial court terminated his parental rights. This argument confuses the due process protection afforded parental rights as amounting to absolute protection. It also ignores well-established caselaw that recognizes the state's interest in the welfare of the child (and this state interest is aligned with the child's interest to be free from an abusive environment). See *In re Brock*, 442 Mich 101, 112-113; 499 NW2d 752 (1993).

Respondent father also argues that the FIA did not make reasonable efforts to eliminate the need for placement and make it possible for the children to return home. MCL 712A.18f. This argument fails in that the lower court record is replete with evidence of numerous and appropriate referrals made by the FIA over the course of two years (including a referral for a psychological evaluation). Although respondent father now complains that he was never provided assistance with child care, there is no indication that he ever requested such help.

Both respondents contest the trial court's findings that clear and convincing evidence established three statutory grounds for termination, and that termination was not contrary to the children's best interest. If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, then the trial court must terminate respondents' rights unless it determines that to do so is clearly against the children's best interests. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

While it is not clear that all trial transcripts were provided to this Court on appeal, it is still possible to determine that the trial court did not clearly err when it found that the statutory grounds for terminating respondents' rights had been established. The amended June 25, 2002 petition alleged, among other things, the issues of respondent father's domestic violence and respondent mother's psychiatric problems. (The issue of respondents' substance abuse was not listed in this amended petition.) Although respondent mother had made great strides in managing her mental health, neither she nor respondent father had fully rectified the adjudicating conditions of domestic violence and aggressive behavior. Given that this was the second time respondents had been asked to address these issues (a 1998 petition alleged essentially the same problems), that respondents had already had two years during the pending case to address these problems, and that respondent mother's counselor opined that respondent mother would do best if given another ten months to a year of services, the trial court did not clearly err in finding that there was no reasonable expectation that the adjudicating conditions would be rectified soon considering the children's ages.

In addition to problems with domestic violence and aggressive behavior, neither respondent had fully complied with the Parent-Agency Agreement's terms involving substance abuse and appropriate visitations. Therefore, the trial court did not clearly err in finding that respondents failed to provide proper care and custody and that there was no reasonable expectation that either would be able to provide such care within a reasonable time considering the children's ages. In addition, respondents' failure to substantially comply with the Parent-Agency Agreement also evidenced that return of the children to respondents may cause a substantial risk of harm to the children's life, physical health, or mental well being. MCR 3.976(E)(1); *In re Trejo*, *supra* at 346 n 3.

Lastly, both respondents contest the trial court's finding regarding the best interests of the children. In addition, respondent mother argues that she met her burden of going forward with best interests evidence and that petitioner did not refute this evidence. Caselaw holds that neither party has a burden of producing evidence on this issue. Rather, the trial court reviews the whole record when determining whether termination is not in the child's best interests. *Id.* at 352-354.

In this case, evidence from the whole record indicated that (1) both respondents expressed love for the children and respondent mother had recently tried to learn more about a disorder recently diagnosed in one of the children; (2) the minor children had spent the last two years in foster care and had also been in foster care in connection with at least one other FIA petition; and (3) the children complained of respondent parents' behavior in the visitations, which caused the visits to be suspended. Given this evidence, the trial court did not clearly err in finding that termination of respondents' parental rights was not contrary to the children's best interests.

Affirmed.

/s/ Janet T. Neff

/s/ Michael R. Smolenski

/s/ Michael J. Talbot